

I2q9marc

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 LUCIA MARETT,

4 Plaintiff,

5 v.

16 CV 9381 (JGK)

6 PALM RESTAURANT INC.,

7 Defendant.

8 -----x
9 New York, N.Y.
10 February 26, 2018
11 4:29 p.m.

12 Before:

13 HON. JOHN G. KOELTL

14 District Judge

15 APPEARANCES

16 LEE LITIGATION GROUP
17 Attorney for Plaintiff
18 BY: C.K. LEE

19 KAUFMAN DOLOWICH & VOLUCK
20 Attorney for Defendant
21 BY: MAUREEN M. STAMPP

I2q9marc

1 (Case called)

2 MR. LEE: C.K. Lee for the plaintiff. Good afternoon,
3 your Honor.

4 THE COURT: Good afternoon.

5 MS. STAMPP: Good afternoon, your Honor. This is
6 Maureen Stampf from Kaufman Dolowich for the defendant.

7 THE COURT: Good afternoon.

8 This is a hearing for final approval of the settlement
9 and the application for attorneys' fees.

10 So, Mr. Lee.

11 MR. LEE: Thank you, your Honor. So we had placed the
12 notice on the website. And the website is -- and the notice is
13 accessible through the company's website through a
14 click-through that only people who are individually -- who are
15 visually impaired can access through a screen reading software.
16 And based on the results, there were 124 click-throughs and
17 there have been no objections or opt-outs.

18 We believe the settlement is fair. We believe that it
19 is a unique opportunity for the Court to provide a case of
20 first impression where there is an injunctive relief class for
21 cases of this type. It can allow defendants to achieve
22 certainty in terms of a settlement that they will not be sued
23 again by different claimants in various states. And this is a
24 settlement which provides adequate relief. It provides for
25 injunction where the defendant will be required to fix and

I2q9marc

1 maintain their website to the highest standard that the
2 business community has agreed upon, which is WCAG2.0A and AA
3 standards. It's a standard that has been approved in the
4 Winn-Dixie lawsuit down in Florida. It's a standard that was
5 approved by Judge Weinstein in the Eastern District. It's a
6 standard that was approved by Judge Forrest here in the
7 Southern District under the Five Guys case.

8 So in general we believe that this lawsuit is fair.
9 It provides a significant relief for people who are visually
10 impaired. And it sets a unique precedent for the community to
11 allow guidance on how to resolve these cases.

12 Thank you, your Honor.

13 THE COURT: Do you want to speak to the issue of
14 attorneys' fees also?

15 MR. LEE: Sure.

16 In regards to the attorneys' fees, the -- we've
17 provided a lodestar. The crosscheck, I believe, is a little
18 bit lower. Our lodestar is actually higher than the amount of
19 fees that was requested.

20 In a similar case in front of Judge Weinstein the fees
21 in that case was approved and his settlement was what he
22 regarded as kind of a hybrid. It was not exactly a Rule 23
23 settlement but he precluded any other claimant to proceed with
24 a lawsuit while the injunction was being pursued by the
25 defendant in that lawsuit.

I2q9marc

1 So we believe that the fees accrued and incurred in
2 this case are fair and reasonable. There was significant work
3 that was done. There was an additional amount of approval that
4 needed to be undertaken. There were significant negotiations
5 in regards to the settlement with the defendants.

6 So we believe that for the amount of time and effort
7 that was placed into this case and in particular it was -- it's
8 a case of first impression. It's a unique case. I don't
9 believe that there has been any other case of this type in the
10 entire country.

11 And so for that purposes I believe that the amount of
12 time and effort that's spent on this case was commensurate for
13 what we're trying to accomplish.

14 Thank you, your Honor.

15 THE COURT: Okay. Ms. Stampp.

16 MS. STAMPP: I don't have anything substantive to add
17 to what Mr. Lee has already said, your Honor. Thank you.

18 THE COURT: Okay. All right. I'll approve the
19 settlement as fair, reasonable and adequate. It's plain it was
20 procedurally fair. It was negotiated at arm's length. There
21 is no evidence of any collusion. It's substantively
22 reasonable. It achieves some injunctive relief for the class
23 that makes it -- makes the website accessible for those people
24 who because of their disability could not otherwise access the
25 website. The fact that there was notice, even though it was

I2q9marc

1 not required for a (b) (2) class, and an opt-out provision for
2 damages is an important factor in my mind in approving the
3 settlement because not only was there notice but there were no
4 objections and no opt-outs.

5 So, applying all of the factors, it's plain that the
6 settlement is fair, reasonable and adequate. It's also clear
7 that while notice was not required, notice was reasonable for
8 purposes of due process and Rule 23.

9 That brings us to the issue of attorneys' fees. The
10 attorneys' fees in this case are reasonable. The lodestar was
11 in excess of \$95,000. And the plaintiff seeks \$89,000,
12 including expenses, which are very modest. The attorney rates
13 are reasonable, certainly comparable to other rates. The
14 amount of hours are reasonable. And I appreciate that I caused
15 additional work in order -- by the lawyers in order to satisfy
16 myself that the settlement was fair and reasonable and to
17 understand the terms of the settlement.

18 So, the lawyers did a very good job. I always
19 hesitate some in heaping too much praise on the lawyers because
20 I don't like to see myself quoted in other cases as a
21 endorsement for the lawyers, as happened in the papers here
22 with respect to other judges. So I hope never to see myself in
23 a transcript explaining that the lawyers did work which
24 justified the fees that the lawyers were seeking, which they
25 did. The lawyers made a more than sufficient showing of the

I2q9marc

1 reasonableness of the fees sought in this case which was about
2 ten percent less than the lodestar, which was a reasonable
3 lodestar. So the incentive fee for the individual plaintiff is
4 reasonable. The attorneys' fees are reasonable.

5 So I'll sign the order approving the settlement and
6 closing the case and also approving the attorneys' fees.

7 Mr. Lee, do you have proposed orders or do you want me
8 to --

9 MR. LEE: Yes.

10 THE COURT: I realize they're attached.

11 MR. LEE: I do have a proposed order for the Court.

12 THE COURT: There are two orders. One is granting
13 final approval and the other is approving attorneys' fees and
14 reimbursement of expenses.

15 MR. LEE: Yes. I actually have both, your Honor.

16 (Pause)

17 THE COURT: I've signed the order granting final
18 approval. I've added a line which says: The clerk is directed
19 to enter judgment and to close this case.

20 And I've signed the order for attorneys' fees. And
21 we'll see that both of these orders get entered. And I'm going
22 to return to you the extras that you gave me, the cover pages
23 and the like.

24 MR. LEE: Thank you, your Honor.

25 THE COURT: Anything else?

I2q9marc

1 MS. STAMPP: No, your Honor.

2 THE COURT: Good to see you all.

3 MR. LEE: Thank you, your Honor. Thanks again.

4 (Adjourned)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25